

EXHIBIT I

N. KOCH

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No.
97-cv-3496 (DRD) (MAS)

WALSH SECURITIES, INC., :
: Plaintiff, :
: vs. : DEPOSITION OF:
: : NANCY KOCH
CRISTO PROPERTY MANAGEMENT,
LTD., a/k/a G.J.L. LIMITED;
OAKWOOD PROPERTIES, INC.;
NATIONAL HOME FUNDING, INC.;
CAPITAL ASSETS PROPERTY
MANAGEMENT & INVESTMENT CO.,
INC.; CAPITAL ASSETS PROPERTY
MANAGEMENT, L.L.C.; WILLIAM
KANE; GARY GRIESER; ROBERT
SKOWRENSKI, II; RICHARD CALANNI;
RICHARD DIBENEDETTO; JAMES R.
BROWN; THOMAS BRODO; ROLAND
PIERSON; STANLEY YACKER, ESQ.;
MICHAEL ALFIERI, ESQ.; RICHARD
PEPSNY, ESQ.; ANTHONY M.
CICALESE, ESQ.; LAWRENCE CUZZI;
ANTHONY D'APOLITO; DAP CONSULTING,
INC.; COMMONWEALTH LAND TITLE
INSURANCE CO.; NATIONS TITLE
INSURANCE OF NEW YORK, INC.;
FIDELITY NATIONAL TITLE
INSURANCE CO. OF NEW YORK;
Coastal Title Agency; DONNA
PEPSNY; WEICHERT REALTORS; and
VECCHIO REALTY, INC., D/B/A
MURPHY REALTY BETTER HOMES
And GARDENS :
: Defendants. :
- - - - -

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1 TRANSCRIPT of the stenographic notes of
 2 the proceedings in the above-entitled matter, as
 3 taken by and before JANET BAILYN, a Certified
 4 Shorthand Reporter and Notary Public of the State of
 5 New Jersey, held at the office of STONE & MAGNANINI,
 6 150 John F. Kennedy Parkway, Short Hills, New Jersey,
 7 on November 11, 2010, commencing at 10:10 in the
 8 forenoon.

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 3 NANCY KOCH
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EXHIBITS

NUMBER	DESCRIPTION	PAGE
Koch-1	Claims Manual	22
Koch-2	Letter dated September 29, 2000	33
Koch-3	Legal Bulletin dated	
	November 25, 1998	40
Koch-4	Legal Bulletin dated	
	July 9, 1999	42
Koch-5	Final Judgment	71

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APPEARANCES:

STONE & MAGNANINI, LLP
 BY: ROBERT MAGNANINI, ESQ.
 150 John F. Kennedy Parkway
 Short Hills, New Jersey 07078
 Attorneys for Plaintiff
 McCARTER & ENGLISH, LLP
 BY: DAVID R. KOTT, ESQ.
 Four Gateway Center
 100 Mulberry Street
 Newark, New Jersey 07102-4056
 Attorneys for Defendant
 Commonwealth Land Title Insurance Co.
 FOX ROTHSCHILD, LLP
 BY: EDWARD J. HAYES, ESQ.
 2000 Market Street
 Philadelphia, Pennsylvania 19103-3222
 Attorneys for Defendants Nations Title
 Insurance of New York, Inc. and Fidelity
 National Title Insurance Co. of New York
 METHFESSEL & WERBEL
 BY: MARTIN R. McGOWAN, ESQ.
 3 Ethel Road
 Box 3012
 Edison, New Jersey 08818
 Attorneys for Defendant
 Coastal Title Agency

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NANCY KOCH, with offices at Old Republic
 National Title Insurance Company, 119 Cherry Hill
 Road, Parsippany, New Jersey, having been duly sworn
 by the Notary, testified as follows:
 DIRECT EXAMINATION BY MR. MAGNANINI:
 Q. Good morning, Miss Koch.
 A. Good morning.
 Q. Can I call you Nancy?
 A. Nancy is fine.
 Q. Thank you, Nancy, for coming today. As
 I mentioned on the phone Stone & Magnanini, which is
 myself and Mr. Mee here, represent Walsh Securities
 Inc., and we've asked you to appear simply as a fact
 witness.
 I understand that you had some
 involvement in the events that are part of our
 complaint either prior to or after the fraud was
 uncovered, and as I said earlier Walsh -- just for
 the record, Walsh Securities, Inc. has declared or
 filed for Chapter 11 bankruptcy protection. We are
 actually not retained, but I understand we're going
 to be retained, but since we had scheduled your
 deposition so long ago I thought we would just go
 ahead with it.
 Let me just ask you: Have you ever been

2 (Pages 2 to 5)

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<p>Page 6</p> <p>1 deposed before?</p> <p>2 A. I have.</p> <p>3 Q. How many times?</p> <p>4 A. A lot.</p> <p>5 Q. Okay. And I'll just give you the basic 6 rules then. It's your deposition. Any time you want 7 to take a break feel free to do so. I would ask you 8 not to take a break while a question is pending. Any 9 time -- I assume you're represented by Mr. Kott?</p> <p>10 A. Yes.</p> <p>11 Q. Any time you want to consult with your 12 counsel just let me know and we will stop, and then 13 as long as you answer the question I'll assume you 14 have understood it. As this wears on the questions 15 may become less intelligible. So, please, if you 16 don't understand one let me know and I'll rephrase 17 it. And then a couple of documents you may or may 18 not have seen but we will just show you. That's kind 19 of the basics of it.</p> <p>20 A. Okay.</p> <p>21 Q. And then could you tell me: Where do 22 you work now?</p> <p>23 A. Old Republic National Title Insurance 24 Company.</p> <p>25 Q. And when did you leave Commonwealth Land</p>	<p>Page 8</p> <p>1 Q. Where did you go to college?</p> <p>2 A. Douglas College, Rutgers University.</p> <p>3 Q. Where did you work between 1984 and 4 1987?</p> <p>5 A. Dilts, D-i-l-t-s, Delancy & Welsh in 6 Somerville, which is a small firm.</p> <p>7 Q. What did you do there?</p> <p>8 A. A little of everything. I was an 9 associate.</p> <p>10 Q. Okay. General practice. And then where 11 did you go after Dilts?</p> <p>12 A. Freelanced for three months, and then 13 I came to work for Trans America Title.</p> <p>14 Q. Okay. And what was the first position 15 you held at Trans America?</p> <p>16 A. Assistant state counsel, I think.</p> <p>17 Q. What did that entail? What were your 18 responsibilities?</p> <p>19 A. Providing underwriting support to agents 20 handling some claims. Some regulatory work.</p> <p>21 Q. How long were you an assistant state 22 counsel?</p> <p>23 A. It was years. I don't remember the 24 exact timing.</p> <p>25 Q. So when you began working for</p>
<p>Page 7</p> <p>1 Title Insurance?</p> <p>2 A. January of 2009.</p> <p>3 Q. When did you start working for 4 Commonwealth?</p> <p>5 A. It's a tortured story.</p> <p>6 Q. As is this case.</p> <p>7 A. Technically Commonwealth -- would have 8 been when Commonwealth acquired Trans America Title 9 Insurance Company who was my employer at that time 10 and that was maybe 1990?</p> <p>11 Q. Okay.</p> <p>12 A. So I started in the title industry in 13 1987.</p> <p>14 Q. Working for Trans America?</p> <p>15 A. Started with Trans America Title 16 Insurance Company.</p> <p>17 Q. Where was your office located?</p> <p>18 A. Parsippany, New Jersey.</p> <p>19 Q. And you're an attorney?</p> <p>20 A. I am.</p> <p>21 Q. When did you graduate law school?</p> <p>22 A. 1984.</p> <p>23 Q. I guess -- where did you go to law 24 school?</p> <p>25 A. Rutgers Camden.</p>	<p>Page 9</p> <p>1 Commonwealth that was still your title?</p> <p>2 A. No. I was -- by then I was probably 3 division counsel. Again, I don't remember the exact 4 timing.</p> <p>5 Q. What does a division counsel do?</p> <p>6 A. I had responsibility for underwriting 7 for Maine to Virginia, not including New York.</p> <p>8 Q. And what did you do -- what did being 9 responsible for that area consist of?</p> <p>10 A. Provided underwriting support to the 11 agents in those states, did some claims, work mostly 12 New Jersey, some regulatory work in all those states.</p> <p>13 Q. And what position did you hold after 14 division counsel?</p> <p>15 A. I went back to state counsel, and then 16 in I think '98 I became agency manager and 17 underwriting counsel. I said '98. Correct?</p> <p>18 Q. Yes.</p> <p>19 A. Which is the position I held until 2009.</p> <p>20 Q. When you went back to being a state 21 counsel, was that for a specific state?</p> <p>22 A. New Jersey.</p> <p>23 Q. For New Jersey. Okay. And did you have 24 the same responsibilities, just --</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. -- in a more limited geographic scope?</p> <p>2 A. Yes.</p> <p>3 Q. And at some point when you were the</p> <p>4 agency manager and underwriting counsel, were you</p> <p>5 involved with an investigation into claims made by</p> <p>6 Walsh Securities?</p> <p>7 A. Yes.</p> <p>8 Q. And then let me just run through the</p> <p>9 list of names and I'll see if you have any</p> <p>10 familiarity with them.</p> <p>11 Are you familiar with a fellow named</p> <p>12 William Kane?</p> <p>13 A. Only through the Walsh matter.</p> <p>14 Q. Did you ever interview him or speak to</p> <p>15 him?</p> <p>16 A. Never.</p> <p>17 Q. How about Gary Grieser?</p> <p>18 A. Through this matter.</p> <p>19 Q. Did you ever speak to him or interview</p> <p>20 him?</p> <p>21 A. No.</p> <p>22 Q. Larry Cuzzi?</p> <p>23 A. That name is not familiar to me.</p> <p>24 Q. How about -- there were five appraisers</p> <p>25 Walsh alleges were involved in the fraud. One was</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I don't recall speaking to either of</p> <p>2 them, no.</p> <p>3 Q. Did you speak to -- there were four</p> <p>4 attorneys that Walsh Securities has alleged were</p> <p>5 involved. One was Stanley Yacker.</p> <p>6 A. I don't believe I spoke to Mr. Yacker.</p> <p>7 I know his name.</p> <p>8 Q. And then another one was Anthony</p> <p>9 Cicalese.</p> <p>10 A. Same, answer, I don't believe I spoke to</p> <p>11 him.</p> <p>12 Q. And then the other -- another one was</p> <p>13 Michael Alfieri.</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever spoken to him?</p> <p>16 A. Not about Walsh.</p> <p>17 Q. And then the other attorney was Richard</p> <p>18 Pepsny.</p> <p>19 A. Yes, same, I never spoke to him but I</p> <p>20 know the name. I don't recall speaking to him.</p> <p>21 Q. There were -- Mr. Kane had a number of</p> <p>22 companies. I don't know if you ever as part of the</p> <p>23 investigation came upon anything related to Cristo</p> <p>24 Properties?</p> <p>25 A. Only through this claim.</p>
<p style="text-align: right;">Page 11</p> <p>1 named Richard DiBenedetto.</p> <p>2 A. Only from newspaper reports.</p> <p>3 Q. So you never spoke to him or interviewed</p> <p>4 him?</p> <p>5 A. No.</p> <p>6 Q. Richard Calanni?</p> <p>7 A. It doesn't sound familiar to me.</p> <p>8 Q. James Brown?</p> <p>9 A. That does not sound familiar to me.</p> <p>10 Q. Roland Pierson.</p> <p>11 A. No.</p> <p>12 Q. Or Thomas Brodo?</p> <p>13 A. Doesn't sound familiar to me.</p> <p>14 Q. Did you ever speak to Anthony D'Apolito</p> <p>15 who was a former Walsh Securities employee?</p> <p>16 A. Not that I can recall, no.</p> <p>17 Q. How about Kelly O'Neill?</p> <p>18 A. Not that I recall, no.</p> <p>19 Q. Did you meet or speak with anyone from</p> <p>20 Walsh Securities during the investigation?</p> <p>21 A. Not that I recall.</p> <p>22 Q. There were also two realtors who were</p> <p>23 involved in originally getting purchasers to act as</p> <p>24 what we've alleged were straw buyers and they were</p> <p>25 Irene DeFeo and Donna Pepsny.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And then G.J.L. Limited.</p> <p>2 A. That does not sound familiar.</p> <p>3 Q. Oakwood Properties.</p> <p>4 A. I don't remember that name.</p> <p>5 Q. DEK Homes.</p> <p>6 A. I don't remember that name.</p> <p>7 Q. And then there was -- early on in the</p> <p>8 acquisition of the properties there was a company</p> <p>9 called D&Sons.</p> <p>10 A. I don't remember that.</p> <p>11 Q. And then two people -- too other names</p> <p>12 you may have come upon were William Epp or Donozo?</p> <p>13 A. Doesn't ring a bell.</p> <p>14 MR. MAGNANINI: Off the record.</p> <p>15 (A discussion takes place off the</p> <p>16 record.</p> <p>17 Q. And then we previously deposed Mr. Agel,</p> <p>18 and I assume you're familiar with him?</p> <p>19 A. Yes.</p> <p>20 Q. And when did you first meet Mr. Agel?</p> <p>21 A. I don't remember.</p> <p>22 Q. He was an agent for Commonwealth among</p> <p>23 other title insurance companies I think since 1989.</p> <p>24 Did you have any involvement with Mr. Agel's becoming</p> <p>25 an agent of Commonwealth?</p>

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1 A. No, not that I recall.
 2 Q. And then Mr. Agel had testified that
 3 during the 1996, '97, that's really the time period
 4 we're initially concerned with, that Mr. Kane's
 5 companies were acquiring properties and then selling
 6 them to buyers and that was -- the transaction, the
 7 second transaction, was financed by Walsh Securities.
 8 Mr. Agel said that he would call you actually
 9 regularly to discuss different things with the -- I
 10 guess problems with the properties and getting clear
 11 title to them. Was that part of your job in 1996,
 12 '97 to answer questions from agents?

13 MR. KOTT: I object to the form.

14 Q. It's a long-winded preface. I
 15 apologize.

16 A. You're asking me was it my
 17 responsibility to answer underwriting questions for
 18 our agents in my time frame?

19 Q. Yes.

20 A. That was part of my job, yes.

21 Q. How was Commonwealth organized in 1996,
 22 '97? Were there other people who dealt with
 23 underwriting questions from agents?

24 A. Yes.

25 Q. And what department were they in?

Page 16

1 occasionally.
 2 Q. What kind of underwriting support did
 3 you provide?
 4 A. I don't have a specific recollection. I
 5 can give you an idea of what generally agents ask
 6 about.
 7 Q. Sure.
 8 A. Whether we can pass on a judgment,
 9 whether we can give affirmative insurance for an
 10 easement, how to deal with an encroachment. I mean,
 11 there are hundreds of thousands of issues.
 12 Q. That can come up in a transfer of
 13 property?

14 A. Yes.

15 MR. KOTT: Off the record.

16 (A discussion takes place off the
 17 record).

18 Q. How did you first learn about the claims
 19 of Walsh Securities?

20 A. I don't remember.

21 Q. And did Commonwealth conduct an
 22 investigation into those claims?

23 A. Yes.

24 Q. And who was involved with the
 25 investigation?

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1 A. Underwriting.

2 Q. Same. Okay. And then were they
 3 attorneys too?

4 A. Yes.

5 Q. And who were they?

6 A. 1996 and seven. I don't know if Kevin
 7 Cairns was there yet or not. I don't remember what
 8 year he was hired. I think Donna Sullivan was still
 9 there or was there. I don't remember anyone else.

10 Q. Okay. And I may have some documents
 11 that may help refresh your recollection I'll get to
 12 in a bit.

13 Do you recall any of the substance -- I
 14 am sure -- let me ask you: Do you recall any of the
 15 conversations with Mr. Agel about any of the
 16 properties -- let me strike that.

17 Do you recall the substance of any of
 18 the conversations you had with Mr. Agel concerning
 19 his underwriting questions?

20 A. Not specifically.

21 Q. Generally?

22 A. I know Bob called me for underwriting
 23 support occasionally.

24 MR. McGOWAN: I'm sorry?

25 A. Bob called for underwriting support

Page 17

1 A. Me, whoever was at the claims department
 2 at the time, maybe Ginger Moran. I'm sure there were
 3 others. I don't remember.

4 Q. How do you or how does or how did
 5 Commonwealth at that time period investigate claims?

6 A. I was not claims counsel at the time.
 7 So I can tell you what I recall about this one, but I
 8 didn't often get involved in claims investigation at
 9 this point in time.

10 Q. Okay. What do you recall about this
 11 investigation?

12 A. I know that I went to Bob's office.

13 Q. Bob Agel?

14 A. Bob Agel's office.

15 Q. We have a lot of Bobs in this case.

16 A. Bob Agel's office to review files, to
 17 look at the files that I believe had been segregated
 18 for us, and the reason I was chosen was partly
 19 because I was the agency manager and partly because I
 20 was a lawyer and partly because I was the only one
 21 available on short notice.

22 Q. I know how that works. And what did
 23 reviewing the files involve?

24 A. I remember pulling random files out to
 25 try to get a handle on what was going on, what the

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1 files looked like, what documentation was in them,
 2 trying to understand how the transactions were going
 3 down. I believe I spoke to Bob and then we took the
 4 files as I recall.

5 Q. I believe Mr. Agel said that he had made
 6 copies of them but I think you took the original ones
 7 he said. What happened after you take the files,
 8 Nancy, or in this case when you took the files?

9 A. I don't remember specifically. They
 10 would have gone to the claims department?

11 Q. And what involvement did you have in the
 12 investigation once the files got to the claims
 13 department?

14 A. Only answering questions that the claims
 15 department might have about what I might know about
 16 the matter.

17 Q. Okay.

18 A. Or seeking information for them.

19 Q. Did you prepare any written summary of
 20 your findings?

21 A. I don't remember.

22 Q. Okay. Which is my next question. Do
 23 you have any documents related to your investigation?

24 A. I do not.

25 Q. Okay.

Page 20

1 Q. Do you recall what you discussed or what
 2 he told you?

3 A. I don't.

4 Q. Did you speak to anyone else at Coastal
 5 Title?

6 A. Probably.

7 Q. Did you make any notes or memos of that?

8 A. Not that I recall.

9 Q. And then -- off the record.
 10 (A discussion takes place off the

11 record).

12 Q. So after -- you went down and you
 13 reviewed the files in Coastal's offices in Freehold?

14 A. Yes.

15 Q. And then the files were transferred to
 16 Commonwealth. Where were your offices at that point?

17 A. Parsippany.

18 Q. Still in Parsippany. Okay. And then
 19 how long did the investigation continue while at -- I
 20 mean how long -- let me just ask: How long did
 21 Commonwealth's investigation continue into the claims
 22 of Walsh Securities?

23 A. I don't know.

24 Q. When was the last time you had any
 25 involvement in the investigation?

Page 19

1 MR. MAGNANINI: Off the record.
 2 (A discussion takes place off the
 3 record).

4 Q. What was your conclusion from your
 5 participation in the investigation?

6 A. My conclusion was I didn't like the way
 7 the files looked. I did not have enough time to
 8 really -- you know, in that day to really get my mind
 9 completely wrapped around it, but I knew that it
 10 didn't -- the files did not look good.

11 Q. Why did they not look good to you?

12 A. Well, it appeared that these were a
 13 series of flip transactions, and at that point in
 14 time flips were not something we were insuring --
 15 well, we probably did a few but we were not actively
 16 insuring them.

17 Q. And did it appear that all the files you
 18 looked at were flip transactions?

19 A. The ones I looked at.

20 Q. Was there anything else that concerned
 21 you about the paper in the files?

22 A. I don't remember.

23 Q. And you said you spoke to Mr. Agel about
 24 this?

25 A. I think I did.

Page 21

1 A. It's years ago. I don't remember
 2 exactly when and it would be peripheral.

3 Q. Okay. By that you mean just answering
 4 questions as they arose?

5 A. Exactly.

6 Q. And then who handled the investigation
 7 by Commonwealth?

8 A. Whichever claims counsel was assigned to
 9 it.

10 Q. Did the investigation end at some point?

11 A. I assume.

12 Q. Why do investigations -- or how did it
 13 end or why do they end normally? That's an
 14 objectionable question.

15 A. How they end? I would say that a
 16 conclusion is made as to liability or what we're
 17 going to do, what the company is going to do about
 18 the claim. That's typically how they end. There's
 19 no more information to obtain.

20 Q. Do you know what the conclusion of the
 21 investigation into the Walsh Securities claims were?

22 A. I'm trying to remember whether I know
 23 this or not. I don't know what the official
 24 conclusion was. I don't recall that. I probably did
 25 know but I don't remember it now.

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<p style="text-align: right;">Page 22</p> <p>1 Q. So you recall that there was some 2 official conclusion to the investigation? 3 A. I'm sure they took a position, I'm sure 4 the company took a position, yes. 5 Q. And what happens when the company takes 6 an official position? Is the insured notified? 7 A. Again, I'm not claims counsel, but I 8 would expect that, yes. 9 Q. I am just going to show you a 10 Commonwealth claims manual, Nancy, which was produced 11 by Mr. Kott's office. 12 (Koch-1, Claims Manual, is received and 13 marked for identification.) 14 Q. Actually let me just ask you this, 15 Nancy: You said you didn't have any documents 16 relating to the investigation. Do you have any 17 documents relating to the Walsh Securities 18 litigation? 19 A. Besides the subpoena? 20 Q. Right. 21 A. I have copies of Donna Sullivan and Bob 22 Agel's deposition transcripts. 23 Q. Those were provided for you to prepare 24 for this? 25 A. By my counsel, yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 responsibilities for dealing with agents? 2 A. When our rep would bring in a prospect I 3 would be the ultimate decision-maker as to whether to 4 sign that agent or not and be involved in the whole 5 process through that. I was responsible for the 6 economic progress of the department, managing the 7 staff, cancellation of agents, terminations, 8 auditing. I didn't do the auditing. 9 Q. But you were responsible for it? 10 A. I was responsible for it getting done. 11 Q. How big was your department? 12 A. Not big enough. 13 Q. Okay. 14 A. In 1996 and seven I probably had four or 15 five people on my staff. 16 Q. To do all the tasks? 17 A. Yes. 18 Q. And then if I could ask you a question, 19 on the first page there, which is Bates stamp COM 20 23869, it says in the third paragraph: "This manual 21 is intended for use by Commonwealth Land Title 22 Insurance Company and the following affiliate 23 companies," and the fourth one down is entitled, 24 Commonwealth Land title Insurance Company of New 25 Jersey. Was there a separate Commonwealth of New</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Did you review any documents to prepare? 2 A. Couple -- two closing service letters, a 3 memorandum about not doing business with some of the 4 players in this transaction and another memo from -- 5 having to do with closing service letters. 6 Q. The memorandum about not doing business, 7 was that issued by Fidelity or was there one by 8 Commonwealth? 9 A. That was by Commonwealth. 10 Q. If you can take a look at what we've 11 marked as Koch Exhibit 1, which is a document -- it's 12 entitled, "Commonwealth Claims Manual," and you will 13 see at the bottom lower right a Bates stamp COM 14 23869, and I believe the last page is COM 24003. 15 That just means it was produced by Commonwealth's 16 counsel. I ask you just to take a look at this and 17 let me know if you have seen this before today. 18 A. I have. 19 Q. And was this a copy of the claims manual 20 that you worked within the -- I guess it's dated 21 1/97. 22 A. I was not claims counsel at the time. 23 So I would have a copy of it as manager, but it was 24 on my shelf. 25 Q. As the manager what were your</p>	<p style="text-align: right;">Page 25</p> <p>1 Jersey? 2 A. Yes. 3 Q. And was that a subsidiary of 4 Commonwealth? 5 A. Yes. 6 Q. Do you know why there was a separate one 7 for New Jersey? 8 A. Yes. 9 Q. Why was that? 10 (A discussion takes place off the 11 record). 12 A. In I think it was 1994, but I'm not 13 positive of that, Commonwealth acquired Reliance, I 14 think it was, or maybe Commonwealth -- Commonwealth 15 acquired Continental Title Insurance Company and 16 Industrial Valley Title Insurance Companies. 17 Continental Title Insurance Company was a domestic 18 underwriter meaning that it was formed in New Jersey. 19 It was a New Jersey underwriter. The company decided 20 at some point in time that the Continental name did 21 not indicate the strength of being part of the 22 Commonwealth family, so we changed the name of 23 Continental to Commonwealth Land Title Insurance 24 Company of New Jersey. 25 Q. Okay. So did you work for that entity</p>

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<p>Page 26</p> <p>1 or actual --</p> <p>2 A. I managed that entity, yes.</p> <p>3 Q. You managed it?</p> <p>4 A. As well as Trans Nation and</p> <p>5 Commonwealth.</p> <p>6 Q. Okay. I just had a couple of questions</p> <p>7 on this. Since the edition date -- how often were</p> <p>8 these published?</p> <p>9 A. I have no idea.</p> <p>10 Q. I believe since this edition date was</p> <p>11 1/97 and Walsh Securities made its claims in July of</p> <p>12 1997 and this is what was produced we thought this</p> <p>13 was the operative claims manual at the time?</p> <p>14 A. I don't know. I assume.</p> <p>15 Q. If you could turn to page what is Bates</p> <p>16 stamped COM 23882, it's actually page ten. It</p> <p>17 says -- of this manual. It says -- it details --</p> <p>18 says: "Subject: Claim Processing." And it says,</p> <p>19 "Major Claims," and the first sentence says, "The</p> <p>20 claims department directly supervises claims</p> <p>21 determined to be major claims."</p> <p>22 Was the Walsh Securities claim a major</p> <p>23 claim?</p> <p>24 A. Yes.</p> <p>25 Q. And why was -- how was it delineated</p>	<p>Page 28</p> <p>1 during the conduct of investigations.</p> <p>2 A. I don't know.</p> <p>3 MR. KOTT: Hold on. That's fine.</p> <p>4 A. I don't know.</p> <p>5 Q. And then on -- if you could flip back to</p> <p>6 Exhibit 16 in Koch-1, which is COM 23945. And it's</p> <p>7 entitled Exhibit 16, "Claim Evaluation/File Contents</p> <p>8 Checklist," and I know you weren't the claim counsel</p> <p>9 for the Walsh Securities claim but were these</p> <p>10 evaluations or checklists completed for each claim?</p> <p>11 A. I don't know.</p> <p>12 Q. Did you ever see one completed for Walsh</p> <p>13 Securities?</p> <p>14 A. No, I never saw one, no.</p> <p>15 Q. If one was completed would it have been</p> <p>16 retained?</p> <p>17 A. I assume.</p> <p>18 Q. What was Commonwealth's, in the general</p> <p>19 manner, record retention policy?</p> <p>20 A. I don't remember.</p> <p>21 MR. MAGNANINI: Off the record.</p> <p>22 (A discussion takes place off the</p> <p>23 record).</p> <p>24 Q. Let me ask you a few questions about the</p> <p>25 very beginning of the manual, Nancy. On page COM</p>
<p>Page 27</p> <p>1 major?</p> <p>2 A. The dollar amount of the potential loss</p> <p>3 was large and the nature of the claim was fraud.</p> <p>4 Q. In order to be a major claim did it have</p> <p>5 to be both or could it be an either/or?</p> <p>6 A. It was up to the claims counsel's</p> <p>7 determination.</p> <p>8 Q. Okay. Did you have any involvement in</p> <p>9 that decision?</p> <p>10 A. No.</p> <p>11 Q. If you can just flip to what is listed</p> <p>12 as Exhibit 20, which is COM 23977?</p> <p>13 MR. KOTT: I think you misspoke. You</p> <p>14 referred to it as Exhibit 20.</p> <p>15 Q. Sorry, David, it's Exhibit 20 within</p> <p>16 Koch-1. So each of these things has a little exhibit</p> <p>17 number on the front of them. And Exhibit 20 is</p> <p>18 actually COM 23976. I did make a mistake. I put one</p> <p>19 more seven in there. And then Exhibit 20 is listed</p> <p>20 as a defalcation checklist. What was the purpose of</p> <p>21 this, Nancy?</p> <p>22 A. Again, I wasn't claims counsel. I can</p> <p>23 guess.</p> <p>24 Q. Okay. I'm just trying to figure out if</p> <p>25 these were used for -- these checklists were used</p>	<p>Page 29</p> <p>1 23874, it says -- the subject says: "Investigation</p> <p>2 and Reporting of Claims." And it says,</p> <p>3 "Acknowledgement of notice of claims." How was that</p> <p>4 actually -- how was that done by Commonwealth in '96,</p> <p>5 '97?</p> <p>6 A. I don't know.</p> <p>7 Q. So you didn't send out any letters</p> <p>8 acknowledging claims?</p> <p>9 A. No.</p> <p>10 Q. They would have come from the claims</p> <p>11 counsel?</p> <p>12 A. Yes.</p> <p>13 Q. And did you have any involvement in the</p> <p>14 investigation of potential coverage?</p> <p>15 A. At the request of the claims counsel,</p> <p>16 yes.</p> <p>17 Q. And what involvement or what did you do?</p> <p>18 A. It would be factfinding. Whatever they</p> <p>19 needed me to try to get for them I would try to get</p> <p>20 them for. If it was files, if it was information.</p> <p>21 Q. That was the going to Coastal and</p> <p>22 looking at the files?</p> <p>23 A. Exactly.</p> <p>24 Q. One of the questions we had asked Donna</p> <p>25 Sullivan, she was the corporate representative who</p>

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<p style="text-align: right;">Page 30</p> <p>1 testified on behalf of Commonwealth, we were trying 2 to track down copies of the title insurance policies, 3 the commitments, closing protection letters, and 4 she -- and I might be mistaken but I believe she said 5 that they would be transferred and end up at the NPC, 6 the National Processing Center --</p> <p>7 A. Yes.</p> <p>8 Q. -- in Louisville. Did you have any 9 involvement in sending documents there or dealing 10 with the NPC?</p> <p>11 A. I didn't personally send things to them 12 generally. I had staff that took care of that, and I 13 did deal with NPC somewhat regularly.</p> <p>14 Q. And does NPC still exist?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Okay.</p> <p>17 A. You know what, I don't know, I don't 18 know.</p> <p>19 Q. What was NPC's purpose?</p> <p>20 A. They were the repository for policies 21 and they also -- for issued policies and closing 22 service letters and also were the forms supplier when 23 we supplied paper forms.</p> <p>24 Q. Okay. Mr. Agel had testified about 25 that, that the things used to come in with a specific</p>	<p style="text-align: right;">Page 32</p> <p>1 claims counsel must obtain a policy from NPC. You 2 see the end of the first sentence into the second? 3 Did you have any involvement in obtaining policies 4 from NPC related to the Walsh Securities claims?</p> <p>5 A. I don't think so.</p> <p>6 Q. How would NPC send copies of policies? 7 Were they paper or were they electronic?</p> <p>8 A. My recollection is at that time it was 9 most often faxed. If we requested a policy they 10 would fax it. That's my recollection. We could get 11 them in paper, but usually it was one policy and they 12 could fax it.</p> <p>13 Q. Okay. After an investigation is 14 concluded what happens to the documents that are part 15 of the investigation?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you know if as a result of the 18 investigation the claims made by Walsh Securities 19 were ever denied?</p> <p>20 A. I think they were but I'm not positive 21 of that.</p> <p>22 Q. Do you recall ever seeing any 23 correspondence to that effect?</p> <p>24 A. I probably did. I don't remember it. 25 Q. We have never seen it.</p>
<p style="text-align: right;">Page 31</p> <p>1 number and each one had to be accounted for.</p> <p>2 A. Yes.</p> <p>3 Q. Things like that. When did you change 4 from -- when did Commonwealth, sorry, change from the 5 paper forms to, I guess, computer-generated forms?</p> <p>6 A. We had not changed as of 2009.</p> <p>7 Q. Okay.</p> <p>8 A. Well, no, we -- I think we were still 9 doing paper in 2009.</p> <p>10 Q. So back in '96, '97, the policies and 11 closing service protection letters issued by Coastal 12 Title Agency were actually -- were paper forms 13 provided by Commonwealth?</p> <p>14 A. No.</p> <p>15 Q. Okay. I didn't get that right then.</p> <p>16 A. The policies were, the policy jackets 17 were. We had not gone electronic with those yet, but 18 agents were able to issue closing service letters off 19 of their computer systems.</p> <p>20 Q. And title commitments?</p> <p>21 A. Paper jackets from us.</p> <p>22 Q. From you? At the risk of you not 23 knowing this, I'll ask the question since I got you 24 sitting here, on page COM 23875 under "Agent Policy 25 Verification," it -- the second paragraph says that</p>	<p style="text-align: right;">Page 33</p> <p>1 A. I probably did but I don't remember. (Koch-2, Letter dated September 29, 2 2000, is received and marked for identification.).</p> <p>4 Q. Nancy, I would like you to take a look 5 at what we've marked as Koch-2, which is a letter 6 from Commonwealth to Coastal Title and ask if -- it's 7 also Bates stamped as you see COM 2386 and ask if you 8 have ever seen this before?</p> <p>9 A. Yes.</p> <p>10 Q. And I assume that's your signature?</p> <p>11 A. It is.</p> <p>12 Q. The -- for my own edification, after the 13 Esquire you have a CTP initials.</p> <p>14 A. Yes.</p> <p>15 Q. What does that stand for?</p> <p>16 A. Certified title professional.</p> <p>17 Q. And is that a state designation?</p> <p>18 A. It's a professional designation.</p> <p>19 Q. How do you get that?</p> <p>20 A. It's done by the New Jersey Land Title 21 Association and it takes into account experience, 22 publication, teaching, you know.</p> <p>23 Q. That you know what you're doing more or 24 less. And then is this a letter that you sent to 25 Coastal Title?</p>

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1 A. Yes.
 2 Q. And it was terminating the relationship
 3 with Coastal Title agency?
 4 A. Yes.
 5 Q. And then in the second paragraph it
 6 says, that Cris, C-r-i-s, Franco will be contacting
 7 you to arrange to retrieve your supply of
 8 Commonwealth and to provide a termination audit. Do
 9 you know if a termination audit was performed on
 10 Coastal Title agency?
 11 A. I don't remember. I assume it was. I
 12 don't remember.
 13 Q. What does a termination audit include?
 14 A. Accounting for the forms, making sure
 15 that the premium remittances that we expect have been
 16 made or will be made, collecting our manuals.
 17 Q. And then what kind of manuals did you
 18 provide the title agents?
 19 A. The only one I can remember at that time
 20 frame was the "Frequently Asked Title Questions"
 21 manual or book, although before my time there were
 22 manuals that Bob might have had. I don't know.
 23 Q. And what were in the manuals?
 24 A. The "Frequently Asked Title Questions"
 25 book were a series of underwriting releases answering

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1 a specific title question. The other manuals I don't
 2 know because I don't know which ones he may or may
 3 not have had.
 4 Q. The "Frequently Asked Questions" manual
 5 was I guess to -- a resource in the first instance
 6 that the title agent would look at before calling
 7 you?
 8 A. Yes.
 9 Q. Before calling Commonwealth, I mean to
 10 say?
 11 A. Yes.
 12 Q. And then do you recall ever hearing
 13 there were any problems or issues raised as a result
 14 of the termination audit with Coastal Title?
 15 A. I don't remember.
 16 Q. Why did Commonwealth -- it says the
 17 termination was a mutual decision. Why did
 18 Commonwealth want to terminate the agency
 19 relationship?
 20 A. Bob was very loyal to Lawyer's Title and
 21 we were not getting a lot of business from him and
 22 felt that there was no sense to continue the
 23 relationship.
 24 Q. Did it have anything to do with the
 25 Walsh Securities claims or litigation?

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1 A. That certainly played in the back of my
 2 mind.
 3 Q. Has Commonwealth done any business with
 4 Coastal Title since the termination?
 5 MR. KOTT: Would you read the question
 6 back.
 7 (The pending question is read by the
 8 court reporter.)
 9 Q. That's up to the time you left, Nancy.
 10 A. I don't think so. I don't remember any.
 11 Q. How did the termination with Coastal
 12 come about?
 13 A. Sorry?
 14 MR. KOTT: Off the record.
 15 (A discussion takes place off the
 16 record).
 17 Q. How did the termination with -- of
 18 Coastal Title agency come about?
 19 A. I don't remember specifically. We would
 20 review our agency relationships monthly in a
 21 department meeting, and at some point in time we
 22 probably looked at Coastal and said we need to
 23 terminate this because it's not -- it's costing us
 24 more than -- to maintain the relationship than to
 25 have it, I think.

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1 Q. That's what I was wondering. The
 2 relationship had not been profitable or had become
 3 less profitable?
 4 A. Yes.
 5 Q. And was Commonwealth's relationship with
 6 Coastal profitable in 1996 or '97?
 7 A. Probably. I don't recall the numbers.
 8 Q. Let me ask, just because the whole title
 9 insurance industry is still a little odd to me, not
 10 to David or Ed, but I as I understand it Walsh
 11 Securities or at the closing on a loan funded by
 12 Walsh Securities a closing lawyer, either Mr. Yacker
 13 or Mr. Cicalese, would pay Coastal Title Agency a
 14 certain amount of money for title policy, closing
 15 service protection letter was particularly listed and
 16 searches and things like that.
 17 How did Commonwealth, which actually
 18 issues the insurance policy, get paid? Money was
 19 remitted from Coastal, the agent, to Commonwealth?
 20 MR. KOTT: Object to the form.
 21 Q. Or was money remitted from --
 22 A. If I can correct one thing, we did not
 23 issue the policies. The policies were issued by
 24 Coastal Title or the agent, whichever agent it is.
 25 MR. KOTT: So the witness has sustained

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<p style="text-align: right;">Page 38</p> <p>1 my objection.</p> <p>2 MR. MAGNANINI: I'm glad someone knows 3 what's going on.</p> <p>4 A. It would be reported to us and remitted 5 to us periodically. So it was up to the agent to 6 make that report and remit the money to us.</p> <p>7 Q. And did you see those reports, Nancy, in 8 your management role?</p> <p>9 A. Occasionally, yes.</p> <p>10 Q. And then if I can go back, you said you 11 were kind of the end of the line or the 12 decision-maker on whether an agent should become an 13 agent of Commonwealth.</p> <p>14 A. Yes.</p> <p>15 Q. And what did you have to do to become a 16 title agent with Commonwealth?</p> <p>17 A. We had an application form. We had -- 18 this is in the '96, '97 area.</p> <p>19 Q. Right.</p> <p>20 A. We had an application form. We did a 21 credit check. The agency representative or I would 22 do an interview with the agent to talk to them and 23 get a handle on their experience. About half the 24 time we would do a pre-sign audit.</p> <p>25 Q. What did that consist of?</p>	<p style="text-align: right;">Page 40</p> <p>1 the cost of maintaining audit staff and all of the 2 company overhead.</p> <p>3 Q. Okay. And that's why -- off the record. 4 (A discussion takes place off the 5 record).</p> <p>6 Q. Most of the premium paid was actually 7 then retained by the title agent?</p> <p>8 A. Right. A larger portion was retained by 9 the agent, yes.</p> <p>10 Q. Do you know how much or -- how much 11 Commonwealth made on the loans that were part of the 12 Walsh Securities claims?</p> <p>13 A. I do not.</p> <p>14 (Koch-3, Legal Bulletin dated 11/25/98, 15 is received and marked for identification.)</p> <p>16 Q. Nancy, if you can take a look at what we 17 marked as Koch Number 3. It's a document that was 18 produced by Commonwealth's counsel and is Bates 19 stamped COM 24180 through 24217. It's titled: 20 "Legal Bulletin" at the top dated November 25, 1998 21 and purports to be from you.</p> <p>22 A. Yes.</p> <p>23 Q. I just ask if you had seen this before 24 today?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 A. If the agent did closings -- if the 2 agent did closings, then we would look at their 3 escrow account. And we would do a spot-check on some 4 underwriting files to see if they looked regular.</p> <p>5 Q. Okay. So once Mr. Agel and Coastal 6 Title are now an agent of Commonwealth you provide 7 them with the forms and a resource for questions, but 8 the title agent does the searches, does the issuance 9 of the policies and the closing service protection 10 letters and -- I don't want to say all that sort of 11 thing.</p> <p>12 A. They obtain the searches and issue the 13 commitments and the policies, yes.</p> <p>14 Q. And --</p> <p>15 A. And examine them.</p> <p>16 Q. And the amount of money that's paid to 17 Commonwealth is laid out in the agency agreement?</p> <p>18 A. Yes.</p> <p>19 Q. And is that a statutory amount?</p> <p>20 A. No, it's by contract.</p> <p>21 Q. It's by contract. Okay. What were the 22 upfront costs then to Commonwealth to having an agent 23 like Coastal?</p> <p>24 A. My and my staff's salary and overhead 25 for our office. The cost of forms, providing forms,</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. And as part of your responsibilities in 2 1998 did you prepare legal bulletins?</p> <p>3 A. Yes.</p> <p>4 Q. And what was the purpose of the legal 5 bulletins?</p> <p>6 A. To communicate with our agents.</p> <p>7 Q. Okay. And who drafted the legal 8 bulletin?</p> <p>9 A. It depends. This one probably was in my 10 secretary's computer and I tweaked it and then she 11 produced it probably.</p> <p>12 Q. Okay. And so these were more or less a 13 form?</p> <p>14 A. This one went out periodically and it 15 was just updated.</p> <p>16 Q. As issues arose in the field. That's 17 what it seemed to be but you tell me.</p> <p>18 A. As attorneys were added or just to give 19 them the most updated list.</p> <p>20 Q. And then the subject matter here of the 21 legal bulletin is: "Non-Approved Attorneys List and 22 Closing Attorney Criteria." How often were these 23 bulletins issued with the non-approved attorneys 24 list?</p> <p>25 A. It was periodic. There was no set time.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. And I will ask you the question: How 2 did you become an approved attorney? 3 A. We didn't have approved attorneys. 4 Q. So all attorneys were approved unless 5 you were not approved? 6 A. All attorneys who met our criteria were 7 approved unless you were non-approved. 8 Q. What were the criteria -- 9 MR. KOTT: Do you want to take a moment 10 to review this document? If you need to you can, if 11 you don't need to you don't have to. 12 A. It's missing the criteria page. 13 Q. Sorry. We actually have another one 14 from '99 which has got the criteria. This one I 15 guess doesn't have it. 16 A. They were always the same. 17 (Koch-4, Legal Bulletin dated July 9, 18 1999, is received and marked for identification.) 19 Q. Nancy, we have given you what's marked I 20 believe Koch Exhibit 4, which is a Legal Bulletin. 21 The Non-Approved Attorneys List dated July 9 of 1999. 22 A. Yes. 23 Q. And then does this have the closing 24 attorneys' criteria on it? 25 A. Yes.</p>	<p style="text-align: right;">Page 44</p> <p>1 was now not approved? 2 A. Usually me. 3 Q. And then when I looked at Koch Number 4, 4 the July 9, 1999 Legal Bulletin, there are two 5 attorneys that we had made allegations about, Stanley 6 Yacker and Anthony Cicalese, are included in the not 7 approved list. Why were they included in the list? 8 A. I don't recall specifically. Probably 9 because of the Walsh claim. 10 Q. Okay. And then I notice that Mr. -- 11 neither Mr. Alfieri nor Mr. Pepsny were included in 12 the non-approved list. Did Commonwealth review them 13 or -- 14 A. Sorry. 15 Q. When we looked at the list, the other 16 two attorneys that Walsh Securities had made 17 allegations were involved in the fraud were Michael 18 Alfieri and Richard Pepsny but they were not included 19 on the non-approved list, and I don't know if you 20 know why that was. 21 A. I don't remember. 22 Q. What happened if a title agent used an 23 attorney that was on the non-approved attorneys list? 24 A. If we found out we told them to cut it 25 out. An agent could call me and ask to do business</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. And where is that? 2 A. COM 24222. 3 Q. And which is entitled: "Criteria For 4 Closing Attorneys"?</p> <p>5 A. Correct. 6 Q. So as long as you met that criteria you 7 were an approved attorney? 8 A. You were allowed to have a closing 9 service letter issued on you, yes. 10 Q. Thank you for that. And then flipping 11 back to the Koch Exhibit 3, the November 25, 1998, we 12 went through the list of attorneys and the four 13 attorneys that Walsh Securities has made allegations, 14 none of those were included in the non-approved 15 attorneys list. 16 How long did it take Commonwealth to put 17 someone on the non-approved list? And I guess I'll 18 ask an objectionable double question: What were the 19 criteria for that? 20 A. How long it took, it depends. What were 21 the criteria? Claims experience, lack of 22 cooperation, disciplinary action in the Law Journal 23 involving suspension or mishandling of funds or real 24 estate transactions. 25 Q. Who made the decision that an attorney</p>	<p style="text-align: right;">Page 45</p> <p>1 with an attorney on our non-approved list and I might 2 occasionally authorize that. 3 Q. Do you recall if anyone ever called 4 asking to do business with Mr. Yacker or Mr. Cicalese 5 after? 6 A. I don't remember that. 7 Q. As to Mr. Yacker and Mr. Cicalese being 8 on this non-approved attorneys list, was that done by 9 Commonwealth or was it a request from Coastal? 10 A. I don't remember. 11 Q. Nancy, if you could flip back to Koch 12 Number 3. Down at the bottom of the first page, COM 13 24180. 14 A. Yes. 15 Q. It says -- fifth paragraph down says: 16 "We continue to experience problems caused by closing 17 attorneys who fail to comply with the lender's 18 instructions and our Schedule B requirements." 19 What type of problems would occur if a 20 closing attorney failed to comply with the lender's 21 instructions and your Schedule B requirements? 22 A. You want examples? 23 Q. I do. 24 A. An attorney fails to timely record a 25 mortgage so an intervening lien -- a deed or mortgage</p>

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<p style="text-align: right;">Page 46</p> <p>1 so an intervening lien might hit. Often an 2 attorney -- not often but occasionally an attorney 3 would fail to timely return closing documentation to 4 a lender and the lender would come to us to rectify 5 that, so then we would have to spend time and effort 6 dealing with that attorney to get that work taken 7 care of.</p> <p>8 Q. Any other?</p> <p>9 A. There are --</p> <p>10 Q. Numerous?</p> <p>11 A. Numerous, yes.</p> <p>12 Q. Okay. Did Coastal ever report any 13 warning signs or problems with any of the attorneys 14 involved in the Walsh Securities claims?</p> <p>15 A. I don't remember it.</p> <p>16 MR. KOTT: Can you read back that 17 answer. (The last answer is read by the court 19 reporter.)</p> <p>20 Q. Do you remember a discussion with 21 Coastal about deeds or documents not being recorded 22 either during the '96, '97 time frame or during your 23 investigation into Walsh Securities claims?</p> <p>24 A. I don't remember --</p> <p>25 MR. KOTT: Excuse me. I object to the</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Was that -- I will call it a mass 2 filing -- ever discussed during the investigation 3 that you conducted?</p> <p>4 A. I don't remember it. (A recess takes place.)</p> <p>5 Q. This was marked as Commonwealth Number 6 3. And I'll ask you to take a look. It's from the 7 deposition -- as I said, Donna Sullivan was the 8 30(b)6 witness for Commonwealth and it's a letter 9 from an attorney at Latham & Watkins, which 10 represented Walsh Securities at the time, dated July 11 28, 1997. As you can see it cc's Miss Sullivan on 12 the -- it's addressed to Commonwealth Land Title 13 Insurance Company. It says, "Donna Sullivan Esquire 14 via telecopy" on the second page. Have you ever seen 15 this letter before?</p> <p>16 A. I don't remember it.</p> <p>17 Q. When you went -- as you can see it's a 18 four-page document. There's two pages putting 19 Commonwealth on notice of claims of Walsh Securities 20 and there's -- there's a Schedule A attached which 21 lists -- it actually lists Walsh Securities' loan 22 number, the borrower, the closing date of the 23 transaction, the loan amount, the correspondent 24 closing agent, and I believe these lists were broken</p>
<p style="text-align: right;">Page 47</p> <p>1 form. Go ahead.</p> <p>2 A. I don't remember specific conversations.</p> <p>3 Q. Did you have any general discussions?</p> <p>4 A. I don't remember them. I believe I did 5 have a conversation. I don't remember it.</p> <p>6 Q. One of the things we found as we've done 7 our own investigation was that there were a number of 8 closings in which the documents were just never 9 recorded and they built up. About April of 1997 10 Coastal Title Agency actually recorded about 300 11 deeds and mortgages to try and straighten out the 12 paperwork. Was that a usual event for the title 13 agents to record deeds and mortgages?</p> <p>14 A. Some agents recorded documents as an 15 accommodation for their attorney customers. I don't 16 think that's what was going on here, but yes.</p> <p>17 Q. And then had you ever come upon an 18 instance where you had one agent recording 300 or so 19 documents at one time for transactions that had been 20 closed months prior?</p> <p>21 A. I don't remember another one.</p> <p>22 Q. Did you have a discussion with Mr. Agel 23 about that?</p> <p>24 A. I don't remember it. I don't remember 25 it.</p>	<p style="text-align: right;">Page 49</p> <p>1 down. As you can see all of these loans were insured 2 by Commonwealth. When you went to Coastal Title how did 3 you know what loans to look at?</p> <p>5 A. I asked Bob to have the files that 6 Commonwealth was involved on -- involved in set 7 aside.</p> <p>8 Q. And Mr. Agel knew what you were talking 9 about?</p> <p>10 A. Well, we had had a whole conversation, 11 yes.</p> <p>12 Q. Before you went down there?</p> <p>13 A. Yes. You know what, let me take that 14 back. I don't remember when it was. I know at some 15 point in time I said to him: I need you to segregate 16 the files so I can come see them, and when I got 17 there there were boxes of files.</p> <p>18 Q. How did Commonwealth first find out 19 about these claims? Was it from the claim --</p> <p>20 A. I don't remember.</p> <p>21 MR. KOTT: Excuse me. I object to the 22 form of the question because how did Commonwealth -- 23 I am not producing her as a 30(b)6.</p> <p>24 Q. Right. How did you find out about it, 25 Nancy? The only reason I'm asking, Walsh Securities</p>

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1 had actually filed a complaint in federal court July
 2 17th of '97 naming attorneys, naming people -- naming
 3 Coastal Title Agency, and then I believe the claim
 4 letter as you see here of July 28 were sent after
 5 that.

6 A. I don't remember.

7 Q. And then did you have a discussion with
 8 Mr. Agel before going to Coastal Title Agency?

9 A. I'm sure I did. I know I didn't just
 10 show up unannounced.

11 Q. And then did you take any notes of your
 12 discussions with Mr. Agel or make any interview
 13 memos?

14 A. No.

15 Q. Do you recall ever having -- after that
 16 one time you went to Coastal Title Agency, did you
 17 ever go back to Coastal Title Agency for any
 18 involvement with the Walsh Securities claims?

19 A. Not that I recall.

20 Q. Do you recall ever receiving any files
 21 or documents from Coastal Title after your initial
 22 visit to them?

23 A. Not that I recall.

24 Q. Nancy, I'll show you what we previously
 25 marked at the Commonwealth 30(b)6 dep Exhibit 6A,

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1 Q. Mr. Agel had testified that the initial
 2 purchase transaction was given a file number and then
 3 to limit confusion the subsequent sale transaction by
 4 one of Mr. Kane's entities was given an A on it and I
 5 guess the question is: Mr. Agel had said that he
 6 had -- had recalled having discussions with you about
 7 different issues involving title insurance with the
 8 properties at issue in the litigation. Do you recall
 9 if he ever told you that they were with the sale or
 10 with the purchase of a property which was
 11 subsequently going to be flipped?

12 A. I don't remember that.

13 Q. Do you recall if Mr. Agel ever told you
 14 that at some point it appears as if or at some point
 15 he became aware that Mr. Kane or his entities were
 16 purchasing the properties to be sold with the money
 17 from the subsequent sale of the properties?

18 A. I don't remember him telling me that.

19 Q. Did you ever have any conversations with
 20 either Mr. Alfieri or Mr. Pepsny about the same
 21 thing? Mr. Pepsny testified that at some point he
 22 realized that the sale of the property was being used
 23 to pay for the purchase of the property.

24 A. I don't recall any such conversation.

25 Q. Nancy, earlier you said you were

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1 which is a closing service letter dated October 30,
 2 1996 issued for Stanley Yacker for a transaction
 3 involving a Rafael Bustos, Senior at 138 Ridge Avenue
 4 in Asbury Park. Have you ever seen this letter
 5 before today?

6 A. I might have seen it -- this may have
 7 been the one that was provided to me to review.

8 Q. Okay. And these are -- this form of
 9 letter was what you testified earlier was produced by
 10 the closing -- by Coastal Title Agency off their
 11 computers?

12 A. It appears to be, yes.

13 Q. One of the questions we have had
 14 throughout was under the file number on the first
 15 page, which is Bates stamped WSWT 000505, which I'll
 16 tell you was produced by Walsh Securities, these were
 17 part of their wire transfer files, which is what that
 18 stands for, it says there's a file number CT 18724
 19 and then there's an (A) in parenthesis. Do you know
 20 what the (A) stands for?

21 A. I do not.

22 Q. Did you have any discussion with Mr.
 23 Agel about the (A) or how they denominated their
 24 closing service letters?

25 A. Not that I recall.

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1 designated by the New Jersey Land Title Insurance
 2 Rating Bureau, CTB --

3 A. New Jersey Land Title Association.

4 Q. Association. Okay. I thought that was
 5 the same -- what is the New Jersey Land Title
 6 Insurance Rating Bureau?

7 A. The Title Act allows title insurers to
 8 form a rating bureau to do forms and rate filings for
 9 its members and the rating bureau is that entity.

10 Q. And each title company has a
 11 representation on the rating bureau?

12 A. Every member company has representation
 13 on the rating bureau, yes.

14 Q. And were you the representative for
 15 Commonwealth?

16 A. I was one of the representatives for
 17 Commonwealth, yes.

18 Q. And then this -- one of the things we've
 19 come upon is this closing service letter here has got
 20 paragraphs one and two and under Conditions and
 21 Exclusions there's listed A to E. During the same --
 22 how were these forms I guess approved for use?

23 MR. KOTT: Excuse me. Approved by whom?

24 Q. For -- just by the title insurance
 25 companies.

14 (Pages 50 to 53)

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1 A. For the rating bureau?
 2 Q. For the rating bureau?
 3 A. The rating bureau would make a forms
 4 filing with the New Jersey Department of Banking and
 5 Insurance, the Department of Banking and Insurance
 6 would do whatever review process they have and they
 7 would approve the form.

8 Q. And then the form was used by -- did it
 9 have to be used by all the title companies?

10 A. All members had to use it unless they
 11 had a deviation filing, yes.

12 Q. And a deviation filing was with the
 13 bureau or with the --

14 A. State of New Jersey.

15 Q. State of New Jersey. If I could show
 16 you, Nancy -- again, this is from the prior
 17 Commonwealth 30(b)6 deposition. It was marked as
 18 Exhibit 7. It's actually another closing service
 19 letter. This one is on behalf of Fidelity Title
 20 Insurance Company. And one of the -- the initial
 21 question I had was: The Exhibit 6A, the Commonwealth
 22 closing service letter, the very bottom on the first
 23 page, Bates stamped WSWT 505, it says: New Jersey
 24 Land Title Insurance Rating Bureau and then there's a
 25 NJRB 604, and then there's a date 8/1/94. Do you see

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1 if you have some knowledge since you were on the
 2 board.
 3 A. It was a mistake is my -- I'm not sure
 4 of that, but I think it was a mistake on Mr. Agel's
 5 part.

6 Q. And the mistake being the issuance of
 7 Exhibit 6A without a paragraph F?

8 A. Correct.

9 Q. You said Mr. Agel would produce and
 10 issue the letters from his computers. Who checked
 11 that at Commonwealth? Did you -- you said
 12 Commonwealth did audits and things like that. Was
 13 the type of forms issued reviewed and checked?

14 A. I'm not sure that the auditor would get
 15 that specific.

16 Q. And how did Mr. Agel get or how did
 17 Coastal Title Agency get the documents to send out?
 18 Did they receive them from Commonwealth is my
 19 question?

20 MR. KOTT: What documents are you
 21 referring to?

22 Q. The closing service letters. Because
 23 you said something like the commitment, there was a
 24 paper binder that was sent to them.

25 A. I don't specifically remember how we

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1 that?

2 A. Yes.

3 Q. The Fidelity closing service letter,
 4 which is Exhibit 7, does not have that on the bottom.
 5 Is that required or was it not required?

6 A. I would say not required.

7 Q. And then one of the other differences is
 8 that Fidelity letter, which is marked as Exhibit 7
 9 there, it has under Conditions and Exclusions a
 10 paragraph F.

11 A. Yes.

12 Q. Where Commonwealth closing service
 13 letter, Exhibit 6A, does not have a paragraph F. Do
 14 you have any knowledge when paragraph F was added to
 15 the closing service letters?

16 A. I don't remember.

17 Q. Do you know why -- I believe both of
 18 them -- as you can see Exhibit 6A, the Commonwealth
 19 letter, was dated October 30, 1996 and the Fidelity
 20 letter, Exhibit 7, is dated October 25, 1996 -- why
 21 each of the title insurance closing service letters
 22 are different?

23 A. I don't know why. I don't know why.

24 Q. Do you -- you said you don't know why.
 25 Do you have an idea? I don't want you to guess but

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1 handled this particular form change, but I do
 2 remember how we did them generally, and what we would
 3 do is we would send a memo out to the agent saying
 4 the forms have changed, this is the nature of the
 5 change, this is the deadline for you making the
 6 change, implementing the change, and either here is a
 7 small supply of the forms in case you can't get --
 8 you need the paper before, or here's how you can get
 9 the forms from NPC, and then it was up to them to
 10 have their computer systems changed.

11 Q. Did the different closing service
 12 letters factor in your decision to terminate Coastal
 13 Title Agency?

14 A. Not that I recall.

15 Q. Was it the general nature of the
 16 litigation among other financials?

17 A. I don't -- yeah.

18 Q. In an effort to save paper, Nancy, I
 19 would like you to take a look at what we have had
 20 marked as Commonwealth Exhibit 8. Earlier, Nancy,
 21 you said you had gone to Coastal Title Agency and
 22 looked at the various files and you said there was
 23 something not right about them. Do you recall what
 24 was not right about them? I'm not sure -- I am not
 25 quoting you, I'm just paraphrasing.

15 (Pages 54 to 57)

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<p style="text-align: right;">Page 58</p> <p>1 A. I remember that it was clear that there 2 were flip transactions going on and that they 3 involved a lot of similar same parties. I have a 4 vague recollection of there being partial transfers 5 in some of these. I don't remember the exact details 6 of it, but I remember seeing something along those 7 lines and saying: That's odd.</p> <p>8 Q. What do you mean, a partial transfer?</p> <p>9 A. I have this vague recollection that the 10 grantor was conveying less than a full interest to 11 somebody else, like a percent interest in the real 12 estate to somebody else.</p> <p>13 Q. Right. Another long-winded 14 introduction, I apologize, but one of the allegations 15 that Walsh has made as part of the fraud was at the 16 closing the buyer would convey 60 percent of the 17 interest in the property to an entity called Capital 18 Assets Property Management, which was owned by Gary 19 Grieser, who I asked you about earlier, and those 20 were some of the deeds also that Coastal Title had 21 recorded. So you recall seeing those deeds, what we 22 call the joint venture deeds, in the files that 23 Coastal had?</p> <p>24 A. Again, I don't have a specific 25 recollection, but I knew that was something that</p>	<p style="text-align: right;">Page 60</p> <p>1 formal commitment numbers.</p> <p>2 Q. So Commonwealth -- even though it was on 3 the form, Commonwealth didn't use it?</p> <p>4 A. This was generated by Coastal's system 5 so I don't know why they had that on there.</p> <p>6 Q. Do you recall when Commonwealth stopped 7 using commitment numbers?</p> <p>8 A. It was before they acquired Trans Nation 9 so it was before my time.</p> <p>10 Q. Like the '80s?</p> <p>11 A. I have no idea.</p> <p>12 Q. Okay. Off the record. (A discussion takes place off the 14 record).</p> <p>15 Q. Nancy, if you can take a look at what we 16 have marked as Commonwealth-9. Like I said we're 17 reusing exhibits, and this I'll represent to you is a 18 sale from G.J.L. Limited, which you said you didn't 19 recall but I'll tell you that was one of the -- it 20 was the alter ego of Cristo Property management, 21 which was owned by William Kane. So Mr. Kane and his 22 companies, either Cristo or G.J.L. would purchase a 23 property. In Exhibit 8 you can see that was 24 purchased from Osis Corporation for \$1,500 on 25 December 16 of '96 and then on December 31 of '96</p>
<p style="text-align: right;">Page 59</p> <p>1 didn't -- that seemed odd.</p> <p>2 Q. To say the least. Okay. And then on 3 this, what we have got listed as Commonwealth -- what 4 is it?</p> <p>5 A. Eight.</p> <p>6 Q. Eight. On the second page there's the 7 description of the property. Where does this come 8 from since it says Commonwealth Land Title Insurance 9 up top?</p> <p>10 A. It looks like it's the description page 11 from a title insurance commitment issued by Coastal 12 Title Agency.</p> <p>13 Q. And then -- and then there's no 14 commitment number as you can see on the second page 15 of the exhibit. When was the commitment number 16 issued?</p> <p>17 A. It depended on the agent.</p> <p>18 Q. Okay. And there's a file number, which 19 CT I will represent to you is Coastal Title. That's 20 what we have seen throughout the documents. The -- 21 that's assigned by Coastal Title themselves, the file 22 number, and that's different than the commitment 23 number?</p> <p>24 A. We stopped using commitment numbers 25 years and years ago. I don't remember ever having</p>	<p style="text-align: right;">Page 61</p> <p>1 there's a deed from G.J.L. to Mr. Bustos. If you 2 actually flip back to exhibit -- Commonwealth Exhibit 3 6A, I believe that was the closing service letter for 4 the Bustos transaction. I apologize if you have 5 already answered the question, but on exhibit 6 Commonwealth-8, if you look at the -- which is the 7 purchase from G.J.L. Limited from Osis, the file 8 number on the second page is CT 18724, which you said 9 was assigned by Coastal Title Agency, and then on 10 Exhibit 9 on the second page is title insurance -- 11 description of the property and it says -- the file 12 number there is CT 18724(A). And I know you said you 13 didn't know what the A was or hadn't discussed it.</p> <p>14 Did you -- I'll ask this as a -- did 15 Commonwealth have any policy about flip properties? 16 You said you were unhappy they were doing them 17 although you said Commonwealth insured some flips 18 but...</p> <p>19 A. I don't remember when we put something 20 out about staying away from them and in what format 21 that went. Whether it was under the red flags of 22 fraud I don't remember. So I don't remember the 23 timing, whether it was before this or after this. 24 However, I do know by this time if someone was 25 calling me and saying: I have this scenario, how</p>

16 (Pages 58 to 61)

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<p style="text-align: right;">Page 62</p> <p>1 about it? I would be saying: It sounds like a flip, 2 we need to scratch the surface harder.</p> <p>3 Q. And do you recall any of those 4 conversations with Mr. Agel?</p> <p>5 A. I don't.</p> <p>6 Q. Do you recall when the -- any 7 conversations with the auditors that you managed 8 about audits of Coastal Title Agency and whether they 9 thought there were flips going on with these 10 commitments at issue, some with the number and then 11 the same number with an A?</p> <p>12 A. I don't remember that.</p> <p>13 Q. While at Commonwealth do you recall any 14 other scenarios similar to that where a title agency 15 would issue a commitment with a number and then the 16 same number but with some sort of suffix on it or 17 something like that?</p> <p>18 A. Yes.</p> <p>19 Q. And when would that occur?</p> <p>20 A. There are a number of scenarios. One 21 might be where a mortgage is securing three different 22 properties in three different counties and they may 23 have a main file number for property -- for the first 24 property and then the one in another county would be 25 A and B or etcetera, to delineate the searches on the</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I think preparing a deed is the practice 2 of law. I suppose a paralegal can do it under the -- 3 no. I don't think they can. I don't know though. I 4 don't think they can.</p> <p>5 Q. Nancy, if you can take a look at what 6 was marked as Commonwealth Exhibit 11, which is Bates 7 stamped CTB 1188 through 1192. Previously marked 8 Commonwealth Exhibit 12, not 11. Nancy, I will just 9 ask: What is this?</p> <p>10 A. It looks like the schedules to a title 11 insurance commitment.</p> <p>12 Q. Who would prepare this?</p> <p>13 A. Coastal Title Agency.</p> <p>14 Q. Do you recognize any of the handwriting 15 on the first page, CTB 1188?</p> <p>16 A. I don't.</p> <p>17 Q. And then after Schedule A and with the 18 description, the third page is CTB 1190, which goes 19 over to CTB 1191, what is the purpose of Schedule B, 20 Section 1?</p> <p>21 A. Schedule B-1 identifies the requirements 22 that need to be met in order for our policy to be 23 issued.</p> <p>24 Q. And then the last page of the document 25 is CTB 1192, which is Schedule B, Section 2. What is</p>
<p style="text-align: right;">Page 63</p> <p>1 various properties.</p> <p>2 Q. Okay. So it wasn't unheard of?</p> <p>3 A. No.</p> <p>4 Q. And then had you ever seen it other than 5 with Coastal Title where the properties were being 6 flipped?</p> <p>7 A. Using the A designation?</p> <p>8 Q. Yes, or something like that.</p> <p>9 A. I don't remember that.</p> <p>10 Q. Nancy, if you can take a look at number 11 ten, which is a deed dated January 7, 1997, which as 12 you see is a week after the sale from G.J.L. to Mr. 13 Bustos. It's actually Bates stamped at the bottom as 14 you see CTB 1202 through 1204. And that, I'll 15 represent to you, is from Coastal Title. Why there's 16 a B we have never been able to figure that out but 17 they produced documents CT A through E.</p> <p>18 This is a deed -- as you see it's from 19 Mr. Bustos conveying 60 percent of the property to 20 Capital Assets as I had discussed. Were these the 21 type of deeds you saw in the files at Coastal?</p> <p>22 A. Probably, yes.</p> <p>23 Q. And the deed is prepared by Lorraine E. 24 King. Can a paralegal prepare deeds?</p> <p>25 MR. KOTT: Objection to the form.</p>	<p style="text-align: right;">Page 65</p> <p>1 the purpose of that?</p> <p>2 A. Those are the items that will be 3 exceptions to title in our policy unless 4 satisfactorily addressed.</p> <p>5 Q. And who was responsible for meeting the 6 requirements of schedule B, Section 1?</p> <p>7 A. Typically the closing attorney or 8 settlement agent.</p> <p>9 Q. So in these transactions it would have 10 been Mr. Yacker or Mr. Cicalese for the closing 11 agents?</p> <p>12 A. Assuming they were the closing attorney, 13 yes.</p> <p>14 Q. And who was responsible for 15 satisfying -- if it's the right word -- the sections 16 in Schedule B, Section 2?</p> <p>17 A. Typically the buyer's attorney who is 18 usually the settlement agent.</p> <p>19 Q. Okay. What happened or what would 20 happen if one of the requirements of the Schedule B, 21 Section 1 was not satisfied?</p> <p>22 A. It depends on which requirement and the 23 scenario that we're under.</p> <p>24 Q. Okay. So there's no general prohibition 25 that if one is not satisfied there's no title policy</p>

17 (Pages 62 to 65)

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1 issued or something like that? Each one is situation
 2 dependent?
 3 A. Yes.
 4 Q. Next one in this long line was marked
 5 Commonwealth Exhibit 13. Nancy, I would ask you to
 6 take a look at what we previously marked as
 7 Commonwealth Exhibit 13, which is an invoice from
 8 Coastal Title Agency to Stanley Yacker, and as you
 9 can see on the first page, it's Bates stamped CTB
 10 1150 and 1151, on page 1150 it says, "Transaction" on
 11 the upper right and it says, "Property," again,
 12 Bustos, 138 Ridge Avenue, Asbury Park. And I would
 13 ask you if you had seen this document before today?

14 A. I don't remember it.

15 Q. Did you ever see the invoices that
 16 Coastal Title issued to the closing agents or the
 17 attorneys?

18 A. In passing, sure.

19 Q. How would you see them?

20 A. If I did an underwriting audit of theirs
 21 I would be in the file, and there might be an invoice
 22 in there that I would see that it's in the file.

23 Q. Did you ever do any underwriting audits
 24 of Coastal Title Agency?

25 A. I did.

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1 this actually relates to the 138 Ridge Avenue
 2 transaction that the other documents you've seen
 3 refer to. And I would ask you: Have you seen this
 4 document before today?

5 A. I don't think so.

6 Q. There was nothing -- or do you recall if
 7 there was anything from Mr. Yacker in the Coastal
 8 files that you looked at?

9 A. I don't have a specific recollection.

10 There could have been correspondence but I don't --
 11 you know, title correspondence, but I don't
 12 specifically recall.

13 Q. If you can look at the third page of the
 14 exhibit, 7083, if you look down on the second to last
 15 events, there's an RFT. It says on the account
 16 description that it's a check to Monmouth County for
 17 707.50, which is then voided, and there's another
 18 check to Monmouth County Clerk. It says, "Record."
 19 And that's also voided. Why would an attorney void
 20 filing fee checks?

21 MR. KOTT: Objection to the form.

22 A. I have no idea.

23 Q. That will bring us to our next -- we're
 24 getting there.

25 A. Okay.

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1 Q. When were they conducted?

2 A. I don't remember.

3 Q. I got to keep asking.

4 A. That's fine.

5 Q. And then on this invoice, which totals
 6 \$1,113, this money was paid by Mr. Yacker to Coastal
 7 Title Agency at the closing. How much of this amount
 8 would be paid to Commonwealth?

9 A. Whatever the contractual commission
 10 split was of the premium and then we get -- got the
 11 \$25 closing service letter fee, if there is one.

12 Yes, there is, if that was paid.

13 Q. And then any of the other costs that are
 14 listed here go to Commonwealth?

15 A. No. I think the -- everything, the exam
 16 and the searches, photocopies, all of those would
 17 have gone to Coastal.

18 Q. Why don't we take a break.

19 (A recess takes place.)

20 Q. Nancy, this was marked at Commonwealth's
 21 dep as Exhibit 15. What I will represent to you is
 22 it is a printout from Stanley Yacker's trust account
 23 and the first two -- it's Bates stamped SYSW 7085 --
 24 actually 7083 through 7086. The first two pages are
 25 just an electronic printout. And I represent that

1 Q. This is document Exhibit Commonwealth
 2 16, which is Bates stamped CTB 1234, which again was
 3 produced by Coastal Title Agency. And I would ask
 4 you just to take a look at that. And do you know
 5 what this is?

6 A. No.

7 Q. Had you ever seen a document like this
 8 before today?

9 A. I could have. Certainly if it came from
 10 Coastal's title file I would have seen something like
 11 that when I went through the file if they kept these
 12 in their file.

13 Q. But this was not a document that you saw
 14 regularly?

15 A. I don't even know what it is.

16 Q. Okay. This one, Nancy, was marked
 17 Commonwealth Number 17. It's closing instructions by
 18 Walsh Securities and as you can see the closing date
 19 is dated December 31, 1996, and it's Bates stamped
 20 WSI, 44744 through 746. Would you see closing
 21 instructions in the Coastal Title Agency's files?

22 A. I don't remember.

23 Q. If Mr. Yacker, the closing lawyer, did
 24 not follow these instructions would that lead to a
 25 claim against Commonwealth?

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1 MR. KOTT: Hold on. Can I have the
2 question back.

3 (The pending question is read by the
4 court reporter.)

5 MR. KOTT: I object. And in what way?
6 What instructions? Which part of the instructions?

7 Q. That's what I'm asking. If there was a
8 violation of the closing instructions issued by the
9 lender, would that lead to an -- or could that lead
10 to a claim against Commonwealth?

11 MR. KOTT: Objection to the form.

12 A. It could lead to a claim.

13 Q. And then what would happen if -- at that
14 point once a claim was filed if the closing
15 instructions had not been followed?

16 A. Presumably the claims department would
17 handle the claim.

18 Q. That's part of an investigation?

19 A. I would guess.

20 Q. Do you recall seeing any of these
21 closing instructions in the files?

22 A. I don't recall.

23 Q. You said during the investigation you
24 didn't speak with Mr. Yacker. Did you speak to
25 anyone from his office?

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1 though the property had been sold by G.J.L. Limited
2 to Rafael Bustos, Senior, as you see the deed was
3 apparently never recorded, and, therefore, when the
4 Monmouth -- or when Asbury Park foreclosed on the
5 property it was in the name of G.J.L.

6 So in this case when the deed was never
7 filed at all, would that trigger coverage under the
8 closing service letter?

9 A. It could.

10 Q. Okay. Why do you say "it could"?

11 A. I mean, it depends on what the closing
12 instructions were and what the claim is. I mean,
13 there are any number of scenarios you could come up
14 with where perhaps it would trigger a claim under the
15 closing service letter.

16 Q. If you could flip back to Exhibit 6A.
17 That was the Commonwealth closing service letter. In
18 this case with the -- having seen the closing
19 instructions and having seen that the deed wasn't
20 recorded, would this closing service letter that's
21 Exhibit 6A provide coverage for the attorney's
22 failure to comply with the written closing
23 instructions?

24 MR. KOTT: Objection to the form.

25 A. I honestly don't know. I don't know.

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1 A. I don't believe so.

2 Q. Lorraine King?

3 A. I don't remember speaking to her.

4 Q. Looking at the closing instructions, in
5 this particular case this property, the -- appears
6 that the deed was never recorded. Would that be a
7 violation of the closing instructions?

8 MR. KOTT: Objection to the form.

9 A. Not literally. I suppose indirectly.

10 Q. What do you mean by that?

11 A. I don't see anywhere in these
12 directions -- in these instructions that say: Record
13 a deed. I do see in the instructions going to title
14 insurance requirements where they say they require a
15 full policy delivered within 30 days. And the way
16 that a policy would be delivered in 30 days is if the
17 deed was recorded since that presumably was a
18 requirement in our commitment.

19 Q. Okay. Nancy, I'll just show you this.

20 (Koch-5, Final Judgment, is received and
21 marked for identification.)

22 Q. Just to wrap up the stack, Nancy, that's
23 been marked as Koch Number 5, which is a Final
24 Judgment with the City of Asbury Park versus, as you
25 see, Block 92, Lot 35, 138 Ridge Avenue. So even

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1 Q. Because each claim is
2 situation-specific?

3 A. Yeah, and, you know, I am not a claims
4 counsel anymore so it's been a long time since I've
5 done claims. I mean, I suppose. I don't know.

6 Q. Okay. I have some red writing of the
7 things I forgot to ask you. Other than your counsel,
8 I don't want you to divulge any discussions, did you
9 speak to anyone to prepare for the deposition today?

10 A. No.

11 Q. I think Donna Sullivan when she
12 testified on behalf of Commonwealth, she had -- did
13 she speak to you to prepare for that deposition?

14 A. She might have called me, yes.

15 Q. What did you talk about?

16 A. No recollection.

17 Q. And then --

18 A. I'm sorry, I do have a recollection. We
19 talked about underwriting memoranda and where they
20 would have been in the Parsippany office. That's one
21 thing we talked about.

22 Q. What did you recall about that?

23 A. When I was there we maintained binders
24 that kept all of the underwriting memoranda from
25 probably the beginning of time chronologically. We

19 (Pages 70 to 73)

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1 also kept a set alphabetically in what we called the
 2 Legal A to Z, which was a set of lateral files so...

3 Q. Were they still there when you left in
 4 2009?

5 A. I believe they were.

6 Q. And then Mr. Agel had said, I think I
 7 told you earlier, that he thought he had
 8 conversations with you throughout 1996, '97 relating
 9 to the properties that eventually were at issue in
 10 this litigation. Do you recall when those
 11 conversations started --

12 MR. KOTT: Object to the form.

13 Q. -- with Mr. Agel?

14 MR. KOTT: Object to the form.

15 A. I don't even recall the conversations.
 16 I'm sorry.

17 Q. Okay. Would he call you on -- other
 18 than these properties, which I know you don't even
 19 know what the properties are, but would he call you
 20 on a regular basis or how would you categorize your
 21 discussions with him?

22 A. As needed. If he needed my advice on
 23 something he would call me.

24 Q. Were they always initiated by Coastal
 25 Title?

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1 to get approval to insure.

2 Q. Who was that memo sent to?

3 A. Agents and offices.

4 Q. Did it also list Walsh Securities?

5 A. It could have.

6 Q. Okay. But you're not sure?

7 A. I am not positive. I think it could
 8 have, yes.

9 Q. And then earlier, and I don't know if
 10 this is a business thing, but what dollar amount is
 11 determined to be a major claim, if it's something
 12 that's --

13 A. I don't know. I mean, I think I
 14 remember the manual saying 100,000, but that's only
 15 because I think that's what that manual says.

16 Q. In '97?

17 A. Yeah, I don't know.

18 Q. What I have, Nancy, are three documents,
 19 they're title insurance commitments. It's for a
 20 separate property, not for the 138 Ridge, but before
 21 we were discussing how Coastal Title would issue a
 22 file number without an A or just a number which was
 23 on the purchase and then a -- the same number with
 24 the letter A afterwards, and I would like you just to
 25 take a look at those two. And they have been

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1 A. Always is a lot. I mean I'm sure I
 2 called him.

3 Q. Mostly?

4 A. Mostly they were initiated by Bob, sure.

5 Q. Okay. And then I think earlier you said
 6 you looked at a memo from Commonwealth about not
 7 doing business with the players you said in preparing
 8 for the deposition. Who was the drafter of that
 9 memo? Do you recall?

10 A. I think it was me.

11 Q. When was it from?

12 A. I don't remember.

13 Q. Who did it -- or what was the substance
 14 of it?

15 MR. KOTT: Excuse me. I'm late with my
 16 objection. I objected to one of the earlier
 17 questions, about three or four, because I'm not sure
 18 she testified earlier that they do not do business
 19 with Walsh but whatever she testified to earlier.

20 Q. I think you said --

21 A. I know what the memo said.

22 Q. If you can give me the substance.

23 A. It basically said if they had
 24 transactions involving certain parties, and I know
 25 one was Cristo, they had to call my office in order

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1 previously marked, as you see. The first document is
 2 King Exhibit 3. That was from the deposition of
 3 Lorraine King. And it's a commitment letter dated
 4 June 16, 1996 for file number CT 17767. What Mr.
 5 Agel -- actually the second document is King Exhibit
 6 4, which is a title insurance commitment, and the
 7 file number is CT 17767(A), and the commitment date
 8 is June 16, 1996 and it's for the -- they're both for
 9 the same property, which is 1017-1019 Bangs Avenue.
 10 What Mr. Agel had testified to was that the first
 11 document, which is King Exhibit 3, was actually
 12 prepared for the purchase of the property by Cristo
 13 Property, and as you see it says in paragraph three
 14 it's fee simple interest, owned on June 16, 1996 by
 15 Norman and Arline Friedman, husband and wife. Yet on
 16 the second commitment, which is King Exhibit 4, also
 17 dated June 16, 1996 it says that the property is
 18 owned by Cristo Property Management by deed from
 19 Norman Friedman and Arline Friedman.

20 And in your experience have you come
 21 upon, while at Commonwealth, any commitment similar
 22 to this where there's a commitment for the same piece
 23 of property at the same day with two different
 24 owners?

25 A. I don't remember seeing any from another

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 agent.</p> <p>2 Q. Do you recall discussing these during 3 the investigation that you did?</p> <p>4 A. With Bob?</p> <p>5 Q. With Bob Agel.</p> <p>6 A. Sorry. I don't remember specifically 7 discussing it with him during this investigation. I 8 might have but...</p> <p>9 Q. Did you speak to anybody in Commonwealth 10 about this?</p> <p>11 A. Yes.</p> <p>12 Q. And who did you talk to about the 13 dueling commitments, I'll call them?</p> <p>14 A. Probably claims, the claims department, 15 somebody over there. Probably with Rick Wilson who 16 was my boss.</p> <p>17 Q. What was his position?</p> <p>18 A. He was either division or regional 19 manager, and I don't know which one. I don't 20 remember which word they used.</p> <p>21 Q. What was the substance of those 22 conversations with Mr. Wilson?</p> <p>23 A. I was just explaining to him what I had 24 found in those files.</p> <p>25 Q. Was this something -- I won't say</p>	<p style="text-align: right;">Page 80</p> <p>1 would be handled on the files without the As. And I 2 think he agreed that the bank then wouldn't know if 3 there were any problems with the title.</p> <p>4 Was that outside the normal course of 5 how Commonwealths agents did business?</p> <p>6 A. Yes.</p> <p>7 MR. McGOWAN: I don't really have 8 anything. I will have one or two if you want to 9 think about what you want to do.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 79</p> <p>1 normal, but outside the ordinary course of how 2 business was usually conducted?</p> <p>3 A. Yes.</p> <p>4 Q. And then one other document I would like 5 you to take a look at. We had marked it as King 6 Exhibit 7. It's a -- it's the actual deed from July 7 25th, it's dated, 1996, as you see at the top from 8 Norman and Arline Freidman to Cristo Property for the 9 sale of 1017-1019 Bangs Avenue for 28,000.</p> <p>10 Do you know why the title commitment 11 that's King Number 4 would say that the property was 12 owned by Cristo Property Management on June 16, 1996 13 when they didn't get the property deeded to them 14 until July 25, 1996?</p> <p>15 A. I don't have a good explanation for 16 that.</p> <p>17 (A discussion takes place off the 18 record).</p> <p>19 Q. One of the things that Mr. Agel had 20 said, the reason he used the two different 21 commitments, the CT 17767 in King-3 and the CT 22 17767(A) in King-4, was to avoid confusion so that 23 the mortgage bank would get the commitments with the 24 As, which were clean commitments, and then the actual 25 problems or what needed to be cleaned up on the title</p>	<p style="text-align: right;">Page 81</p> <p>1 CROSS-EXAMINATION BY MR. McGOWAN:</p> <p>2 Q. You were provided in preparation for 3 today's deposition with the deposition transcripts of 4 Mr. Agel's testimony?</p> <p>5 A. Yes.</p> <p>6 Q. And he was there for I think two days. 7 Did you have both of those transcripts?</p> <p>8 A. I had several volumes.</p> <p>9 Q. My recollection is, and I think you were 10 asked about this earlier, is that Mr. Agel had 11 indicated at one point or another during -- while 12 these transactions were going on he had called you up 13 and sort of explained to you what was happening and 14 you told him to just continue processing in the way 15 he had been. That at least is my recollection of his 16 testimony. Do you recall reading that in the 17 transcripts?</p> <p>18 A. I do recall reading that.</p> <p>19 Q. Do you recall that -- those types of 20 conversations with Mr. Agel?</p> <p>21 A. I do not.</p> <p>22 Q. Can you sit here today and tell me that 23 that didn't occur, or are you simply saying you don't 24 recall it?</p> <p>25 A. I can't say that he never spoke to me.</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 I can tell you it surprised me that that was the 2 content of the conversation.</p> <p>3 Q. When is the first time you recall 4 becoming aware that these transactions involved what 5 you referred to as flips?</p> <p>6 A. I don't remember.</p> <p>7 Q. Was it before you went down and actually 8 physically looked at the files?</p> <p>9 A. Yes.</p> <p>10 Q. It was. Okay. And how did you become 11 aware of it? Forgetting about when, but how did you 12 become aware that these transactions involved what 13 you referred to as flips?</p> <p>14 A. I don't remember.</p> <p>15 Q. Your indication was there was a time 16 when some sort of memo went out that said: We are no 17 longer doing flips from a title insurance standpoint?</p> <p>18 A. We definitely put something out. I 19 don't remember whether it was: These are the red 20 flags of fraud, flip-style transactions, or whether 21 we said we're not doing flips.</p> <p>22 Q. All right. As a practical matter though 23 I think your testimony was, whether or not some sort 24 of official edict had been issued, as a practical 25 matter you all were against insuring flips. Is that</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. My point is: Two or three others 2 besides Coastal?</p> <p>3 A. Yes.</p> <p>4 Q. Were any of them involved in 5 transactions that had flips at or about the same 6 period of time, if you know?</p> <p>7 A. I don't know.</p> <p>8 Q. And Mr. Magnanini asked you this before. 9 You weren't familiar with any of the names involved 10 here, were you, like Cristo Property Management? 11 From years passed I am talking about.</p> <p>12 A. Prior to '96?</p> <p>13 Q. Prior to all this.</p> <p>14 A. No.</p> <p>15 Q. So Gary Grieser and Kane and none of 16 those names mean anything to you from beforehand?</p> <p>17 A. I don't think so, no.</p> <p>18 Q. All right. I have nothing else.</p> <p>19 CROSS-EXAMINATION BY MR. KOTT:</p> <p>20 Q. You said in response to one of Mr. 21 McGowan's questions, and I am going to paraphrase 22 what you said, that you were surprised about what Mr. 23 Agel said in his deposition that he said that was a 24 conversation he had with you. Do you remember that 25 testimony?</p>
<p style="text-align: right;">Page 83</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Had that always been the case?</p> <p>4 A. Probably not.</p> <p>5 Q. Do you know why there was a 6 disinclination on the part of Commonwealth to have 7 title insurance transactions involving flips?</p> <p>8 A. Because many of them appeared to be 9 fraudulent or questionable.</p> <p>10 Q. Okay. Other than these transactions 11 that were running through Coastal Title Agency, back 12 at the same period of time did you have another title 13 agency that used Commonwealth in Monmouth County back 14 in the late '90s?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know whether or not that other -- 17 how many?</p> <p>18 A. For Commonwealth? The brand 19 Commonwealth?</p> <p>20 Q. Yes.</p> <p>21 A. In Monmouth County?</p> <p>22 Q. Yes.</p> <p>23 A. I mean, I can think of one off the top 24 of my head because they're in Freehold. I'm sure 25 that there were -- there was at least one other.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Yes.</p> <p>2 Q. Why were you surprised when you read 3 what Mr. Agel said his conversation was with you?</p> <p>4 A. I knew at that point in time that we 5 were not approving these types of flips because we 6 were worried about them, and it would surprise me 7 that I would say: It sounds like you're doing the 8 right thing.</p> <p>9 Q. Thank you, I have no further questions.</p> <p>10 REDIRECT EXAMINATION BY MR. MAGNANINI:</p> <p>11 Q. I want to follow up one other thing.</p> <p>12 Mr. Agel said he thought he received a letter from 13 Commonwealth about the Walsh Securities lawsuit and 14 he said it was a threatening letter, threatening some 15 sort of potential litigation, and I asked him what 16 happened to it, and he said he had called someone at 17 Commonwealth and it had gone away.</p> <p>18 Did you have any involvement with 19 sending out a letter to Coastal about -- or after the 20 Walsh Securities litigation was initiated, I'll say?</p> <p>21 A. I would have been consulted on it. You 22 know, if claims thought that we should go back 23 against the agent on this claim, the claims 24 department would have consulted with me. Because of 25 the nature of this claim it would have been above me</p>

22 (Pages 82 to 85)

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1 also. My boss and his bosses would have also been
 2 involved. I don't remember the specifics of it, but
 3 I know that we had that conversation and I do
 4 remember Bob going over my head on it.

5 Q. Okay. So he did receive a letter?

6 A. I think he did. I don't specifically --
 7 I know that he was very angry and went to Ron in
 8 Pittsburgh and...

9 Q. Who is Ron?

10 A. Ron Owen was a senior vice president,
 11 upper level manager.

12 Q. And did you have any discussions with
 13 Ron or --

14 A. I don't know if I spoke to Ron or if
 15 Rick did. I don't know.

16 Q. When you said you spoke to Mr. Wilson
 17 after your investigation, did you have any
 18 recommendations or give him any -- your views on what
 19 you had seen?

20 A. I think it was just factual. I think at
 21 that point in time I was telling him what I was
 22 seeing in the files. You know, what I had seen and I
 23 think that was it.

24 Q. I don't think I have anything else.
 25 Thank you very much.

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1 CERTIFICATE.

2
 3 I, JANET BAILYN, a Notary Public and
 4 Certified Court Reporter of the State of New Jersey,
 5 do hereby certify that prior to the commencement of
 6 the examination NANCY KOCH was duly sworn by me to
 7 testify the truth, the whole truth and nothing but
 8 the truth.

9 I DO FURTHER CERTIFY that the foregoing
 10 is a true and accurate transcript of the testimony as
 11 taken stenographically by and before me at the time,
 12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a
 14 relative nor employee nor attorney nor counsel of any
 15 of the parties to this action, and that I am neither
 16 a relative nor employee of such attorney or counsel,
 17 and that I am not financially interested in the
 18 action.

19
 20 Notary Public of the State of New Jersey
 21 My commission expires February 3, 2013
 22 License No. XI00970

23 Date: November 12, 2010
 24
 25

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1 A. You're welcome.

2 MR. KOTT: Mr. Magnanini or his office
 3 will be the custodian of the exhibits from today's
 4 deposition.

5 MR. MAGNANINI: We will send those
 6 around as per our usual agreement.

7 (The deposition is concluded at 2:16
 8 p.m.)

9

10

11

12

NANCY KOCH

13 Subscribed and sworn to before me
 14 this _____ day of _____, 2010.

15

16

17

18 Notary Public

19

20

21

22

23

24

25

23 (Pages 86 to 88)

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